

4-12-2012

# Moore v. State Appellant's Brief 1 Dckt. 39523

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Inmate name Albert Moore  
IDOC No. 90125  
Address SICI N.O. DI  
Box 8509  
Boise, Id. 83207  
Appellant

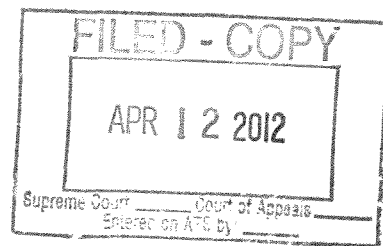
IN THE SUPREME COURT OF THE STATE OF IDAHO

Albert Moore, )  
Appellant, )  
vs. )  
STATE of Idaho )  
COUNTY of Ada )  
CITY of Meridian )  
Respondent. )

Case No. 39523

APPELLANT'S BRIEF

Appeal from the District Court of the FOURTH Judicial District  
for Ada County.  
The Honorable McLaughlin, District Judge presiding.



## EXHIBITS

- 1 Moore v. State opinion 36033-35486
- 2 Moore v. State opinion No. 76, 2011
- 3 Early v. Packer, 537 U.S. 3 (2002)
- 4 Westlaw N.D. St. 39-08-01
- 5 State N.D. v. Moore 98-K-3689
- 6 Trans. July 9, 2008 State v. Moore Doc. #36033
- 7 2009
- 8 Trans # CREE-08-373 6-12-08
- 9 " # " " " 6-9-2010
- 10 " " " " " 9-7-2010
- 11 Judgement 6-9-2010 CREE 08-373
- 12 " 5-27-10 CREE 08-374
- 13 App. det letter 6-2-09
- 14 " " " " 11-12-09
- 15 " " " " 2-5-10
- 16 N.D. Authentication By Pros. 6-9-2010
- 17 " " By Pros. original
- 18 N.D. Letter Depiction.
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- 20
- 21
- 22
- 23
- 24 -pg. 2

- 1 Federal Table of Cases and Authorities
- 2 Early v. Packer, 537 U.S. 3, 123 S.Ct. 362, 154 L.Ed.2d
- 3 263 (2002)
- 4
- 5 Santobello v. New York, 404 U.S. 257 (1971)
- 6
- 7 U.S. v. Bowchimeh, 738 F.2d 1001, 1003 (9th Cir. 1984) 471
- 8 U.S. 453, 105 S.Ct. 2103, 85 L.Ed.2d 462 (1985) per curiam
- 9
- 10 With U.S. v. Travis, 735 F.2d 1129, 1132 (9th Cir. 1984)
- 11
- 12 U.S. v. Camper, 66 F.3d 229 (1995)
- 13
- 14 U.S. v. Bruce, 976 F.2d 552 (9th Cir. 1992)
- 15
- 16 U.S. v. Cassatt, 59 F.3d 1173 (11th Cir. 1995)
- 17
- 18 Menna v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.
- 19 2d 418 (1969)
- 20
- 21 Brede v. Powers, 263 U.S. 4, 10 (1923) 218.
- 22
- 23 Hurtado v. California, 110 U.S. 516 (1884)
- 24

- 1 McDonald v. Chicago, U.S., 130 S.Ct. 3020, 3035 n.13  
2 (2010) Id. 2T, 130 S.Ct. 2T 3034, 3036-3042
- 3 \_\_\_\_\_
- 4 Assize of Treason, (1166)
- 5 \_\_\_\_\_
- 6 Russel v. U.S., 369 U.S. ~~749, 761~~ (1962)
- 7 \_\_\_\_\_
- 8 Ex parte Bain, 121 U.S. ~~235~~, 6 (1887)
- 9 \_\_\_\_\_
- 10 Bryan H. Wildenthal, 14<sup>th</sup> Amendments in 1867-1873, 18 J. Contemp.  
11 Legal Issues 153, 214-215 (2009)
- 12 \_\_\_\_\_
- 13 Applicable to States, Id. 2T 192-98
- 14 \_\_\_\_\_
- 15 Hamilton v. U.S., 67 F.3d 761 (9<sup>th</sup> Cir. 1995)
- 16 \_\_\_\_\_
- 17 Banks v. U.S., 920 F.Supp. 688 (E.D. Va. 1996)
- 18 \_\_\_\_\_
- 19 Brady v. Maryland, 373 U.S. 83, 1 L.Ed. 2d 215, 83 S.Ct.  
20 1194 (1963)
- 21 \_\_\_\_\_
- 22 Jencks v. U.S., 353 U.S. 657, 1 L.Ed. 77, 83 S.Ct. 1007 (1957)
- 23 \_\_\_\_\_
- 24 \_\_\_\_\_

- 1 Towse v. Burke, 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed.
- 2 1690: (1948)
- 3
- 4 Greene v. U.S., 880 F.2d 1299 (11th Cir 1989)
- 5
- 6 STATE CITES OR AUTHORITY
- 7 State v. Moore, 148 Idaho 887, (2010) 231 P.3d 532.
- 8 April 12, 2010 Nos 35486, 36033.
- 9
- 10 State v. Moore, Pocket 38 285, 2011 opinion No 76.
- 11
- 12 State v. McFarland, 130 Id. 358, 941 P.2d 330 (Ct. App
- 13 1997)
- 14
- 15 BLACKS Law Dict., Collateral estoppel - Res Jud. cad.
- 16
- 17 State v. Miller, 530 N.W.2d 652 (N.D. 1995)
- 18
- 19 State v. Rutherford, 107 Idaho 910, 693 P.2d 112
- 20 (Ct. App 1985)
- 21
- 22 State v. McCoy, I.C. 18-112, 49-1404, 1996, 128 Idaho 362,
- 23 913 P.2d 578
- 24

- 1 State v. Seltz, 103 Idaho 54, 644 P.2d 376 (Ct. App. 1982)
- 2 \_\_\_\_\_
- 3 Wilson v. State, 2000, 133 Idaho 874, 993 P.2d 1205.
- 4 \_\_\_\_\_
- 5 State v. Rogers, 2004, 140 Idaho 223, 91 P.3d 1129
- 6 \_\_\_\_\_
- 7 State v. Gervasi, 138 ~~Idaho~~ 813, 69 P.3d 1074 (Ap.Ct. 2003)
- 8 §§ 18-2602, 18-2603, 18-3201, 18-3203.
- 9 \_\_\_\_\_
- 10 State v. Pate, 2003, 139 Idaho 607, 83 P.3d 781
- 11 \_\_\_\_\_
- 12 State v. Nunez, 1999, 133 Idaho 13, 981 P.2d 738
- 13 \_\_\_\_\_
- 14 State v. Molinelli, 105, Idaho 833, 673 P.2d 433 (1983)
- 15 \_\_\_\_\_
- 16 Appellate Rules Rule 15
- 17 \_\_\_\_\_
- 18 \_\_\_\_\_ N.D. Cites. Provided by dcs.
- 19 State v. Miller, 530 N.W.2d 652 (N.D. 1995)
- 20 \_\_\_\_\_
- 21 State v. Ghylin, 250 N.W.2d 252 (N.D. 1977)
- 22 \_\_\_\_\_
- 23 State v. Schwalk, 430 N.W.2d 317 (N.D. 1988)
- 24 \_\_\_\_\_

1 Salvaggio v. N.D. DOT, 477 N.W.2d 195 (N.D. 1991)

2

3 Wiederholt v. Director, N.D. DOT, 462 N.W.2d 445 (N.D. 1990)

4

5 State v. Whitney, 377 N.W.2d 132 (N.D. 1985)

6

7 State v. Schuh, 496 N.W.2d 41 (N.D. 1993)

8

9 State v. Huber, 555 N.W.2d 791 (N.D. 1996)

10

11 City of Fargo v. Theusch, 462 N.W.2d 162 (N.D. 1990)

12

13 State v. Schuler, 243 N.W.2d 367 (N.D. 1976)

14

15 N.D. D.C. Statute, 63 N.D. L. Rev. 301 (1987)

16

17 EX POST FACTO CLAUSE

18 A law passed after the occurrence of a fact or  
19 commission of an act, which retrospectively changes  
20 the legal consequences or relations of such fact  
21 or deed. A law is unconstitutionally "ex post facto" if  
22 it deprives defendant of a defense to criminal  
23 liability that he had prior to enactment of  
24 the law. State v. Rogers, Ohio Com. Pl. 346 N.E.2d



1 352, 361 Art. 1 § 9(3) and § 10 of The U.S. CONST. Pro-  
2 hibited to both Congress and The States from passing  
3 any "ex post facto Laws"  
4 An "ex post facto Law" is defined as a law which  
5 provides for infliction or punishment upon a person  
6 for an act done which, when it was committed,  
7 was given amnesty; a law which aggravates a crime  
8 or makes it greater than when it was committed;  
9 a law that changes the punishment or inflicts a  
10 greater punishment than the law annexed to the  
11 crime when it was committed;  
12 a law that changes the rules of evidence and re-  
13 quires less or different testimony than was re-  
14 quired at the time of commission of the offense  
15 in order to convict the offender.  
16 A law which assuming to regulate civil rights  
17 and remedies only, in effect imposes a penalty or  
18 the "deprivation" of a "right" which when done was  
19 a lawfull;  
20 a law which deprives persons accused of a crime  
21 of some lawfull protection to which they have  
22 become "entitled", such as the <sup>protection</sup> ~~former~~ to which  
23 they have become entitled, such as the protection  
24 of a "former conv. or acquittal" or of the proc-

1 Definition of "Injustice"; every Law which in Rela-  
2 tion to the offense or its consequences Alters  
3 the Situation of a Person to his disadvantage.  
4 Wilensky v. Field, Fla. 267 So. 2d 1, 5.

5 Ex POST FACTO CRIME.

6 State v. Rogers, Ohio Com. Pl., 346 N. E. 2d 352, 361  
7 Art. 1 § 9(3) and 10 of the U.S. Const.

8  
9 Wilensky v. Field, Fla. 267, So 2d 1, 5.

10

11 Bill of Pains and Penalties

12 Statutory Provisions for Punishment without Judicial  
13 Determination of guilt similar to bill of attainder  
14 except Punishment is less severe. Prohibited by  
15 U.S. Const. Art 1 § 9(1).

16 "Contract" An agreement between two or more persons  
17 which creates an obligation to do or not to do a  
18 particular thing. As defined in Restatement, Second,  
19 Contracts § 3; A contract is a promise or a set of  
20 promises for the breach of which the Law gives  
21 a remedy, or the performance of which the Law  
22 recognizes in some way a duty. A legal relation  
23 ship consisting of the right and duties of the  
24 contracting parties.

1 a promise or set of promises constituting an agree-  
2 ment between the parties that gives a legal duty  
3 to the other and also the right to seek a re-  
4 medy for breach of those duties. A legal con-  
5 sideration, mutually of the agreement mutually of  
6 obligation. Lamoureux v. Burrillville racing ASSN  
7 91 R.I. 94, 161 A.2d 213, 215.

8 contract clause provision in U.S. Const. Art. I Sec.  
9 10, to the effect no state shall pass a law im-  
10 pairing obligation of contracts. Trustees of  
11 Dartmouth College v. Woodward, 17 U.S. (4 Wheat.)  
12 518, 4 L. Ed. 629

13 Bill of Rights and Particulars cited  
14 U.S. Const. Art I § 9 (1) contracts § 3

15  
16 Lamoureux v. Burrillville racing ASSN 91 R.I.  
17 94, 161 A.2d 213, 215

18  
19 Dartmouth College v. Woodward, 17 U.S. (4 Wheat.)  
20 518, 4 L. Ed. 629

21  
22 Bill of Particulars

23 Com. v. Mervin, 230 Pa. Supra, 552, 32 b A.2d  
24 602, 605

## ARGUMENT

### A. Introduction

### B. Argument

Albert R. Moore Petitioner in this action  
Pro. Se. Form 220 per 2nd State according to  
U.S. Supreme Court Law Mich McLaughlin Dist.  
#1 Court sits in conflict in conflict of said  
Laws 25 of April 12, 2010 upon remand of case  
#36033 opinion #25 by sentencing petitioner  
June 9, 2010, and sentencing on Oct. 7, 2010 and  
holding a hearing for ineffective counsel on  
1-26-2012

By denying Moore's objection to sentencing  
June 9, 2010 then allowing Pros. to come  
forward objecting to sentence 3½ months later  
By ordering time served credit according  
2- To Pled agreement then on Oct. 7, 2010  
taking away time served credit,  
3- Both issues were "collateral estopped" and  
"res judicata" being a Const. Issues "2 Due  
Process" "1 Double Jeopardy"

## Argument

1 A Court loses Material Jurisdiction when it is  
2 sitting in conflict with Fed. Law; Id. Supreme Ct.  
3 Early v. Packer, 537 U.S. 3, 123 S.Ct. 362, 154 L.Ed.2d  
4 263 (2002) According to Santobello v. New York, 404  
5 U.S. 257 (1971) Syllabus ¶257 requires specific performance  
6 of the agreement of the plea (in which case "Peti-  
7 tioner be resentenced by 2<sup>nd</sup> different Judge" or  
8 the relief he seeks; U.S. v. Camper, 66 F.3d  
9 229 (1995) Requires resentencing before 2 different  
10 Judges; U.S. v. Benchimal, 738 F.2d 1001, 1003 (9<sup>th</sup>  
11 Cir. 1984) En Titled to specific performance and  
12 resentencing before 2 different Judge, 471 U.S.  
13 453, 105 S.Ct. 2103, 85 L.Ed.2d 462 (1985) Par. Curiam  
14 with U.S. v. Travis, 735 F.2d 1129, 1132 (9<sup>th</sup> Cir. 1984)  
15 U.S. v. Bruce, 976 F.2d 552 (9<sup>th</sup> Cir 1992) Judges improper  
16 participation in plea violated Fed. R. Crim. P. 11(e)(1)  
17 and raised questions of impartiality and coerciveness.  
18 U.S. v. Cassa, 59 F.3d 1173 (11<sup>th</sup> Cir 1995) Judge's part  
19 icipation in plea negotiations process could be  
20 construed as coercive.  
21 Margalli-Olivero v. I.N.S., Ambiguity in plea agreement  
22 is construed in favor of def. and against the Gov.  
23 Mullan v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.  
24 2d 418 (1969) Where the "State" is precluded by the

## Argument

1 U.S. CONST. From taking a def. into CT, Fed. Law requires  
2 that a conv. be set aside even if the conv. was  
3 entered pursuant to a counseled Plea of Guilty"  
4 STATE V. Moore, Ho800373 Transcript July 9, 2008 P.3  
5 2, LN. 20 THRU 28 P.3 LN. 1 THRU 3, "The court coersing a  
6 Plea, Aug 6, 2008 P.42 LN. (3 THRU 6 The CT. for the  
7 second time coersing a Plea.) (P. 43<sup>LN</sup>, 6 THRU 9 For  
8 the third time coersing a plea.) P.53 LN 11 THRU 14  
9 Showing complete bias and prejudice by the  
10 Ct." <sup>emphasis Added</sup> "It will be run at the end of jury sentence  
11 imposed in this case.") Page 62 THRU 73, "Showing  
12 complete prejudice in eliminating evidence  
13 def. had such as License Plate's and registration  
14 which were up to date along with EPA rating  
15 Officer had written def. up for improper dis-  
16 play and would not allow def. to file ineffective  
17 Counsel, witnesses would have testified that  
18 car was parked on fairview not Meridian 30.  
19 and ineffective counsel not getting a simple  
20 request affidavit from Nathan Lee Bennett as to  
21 were his plate's missing. Again 4<sup>th</sup> time for  
22cing def. into Plea. Page 76 Dec. 1, 2008 The Ct.  
23 LN 8-11 The Ct. once again 5<sup>th</sup> coersion" we talked  
24 about a concurrent sentence potentially of 1yr Fixed  
25 4yr Indt.

## Argument

1 STATE v. McFarlane, 130 Id. 358, 941 P.2d 330 (CTA 1997)  
2 (Page 127 I.C.R.) Where a Judgment has been vacated,  
3 it is a nullity and The effect is as if it never been  
4 rendered at all; and The Ct. of Appeals Opinion  
5 reversing The district Ct's decision denying The def's  
6 a psychological eval. and vacating The def's Sen-  
7 tence nullified Those Sentencing Proceedings; and  
8 Consequently on Remand, The def's case proceeded as  
9 is The Original Sentence had never been entered;  
10 and Under This rule The district Ct. should have  
11 Utilized The Less Rigorous Standard of Just Re-  
12 son in determining Whether to grant The def's re-  
13 quest to withdraw his Alford Plea.  
14 The ~~Re~~<sup>CT</sup> lacked discretion on Oct. 7, 2010 when  
15 it even considered The vacated Sentence: in  
16 case CR-FE-08-373 Doc. 31, 2008 as per Transcript  
17 Page 91 at Sentencing the Ct. Ordered ~~that~~<sup>only</sup>  
18 That def. receive 848 days Credit for Time Served  
19 4 Times UNTIL def. agreed LN 18+19 def. "Yes Sir"  
20 That sounds a lot better Than what they was  
21 giving me before" The Ct. LN. 20, 21, 22 "Okay"  
22 Well I'll let you Talk that over with your att.  
23 but that's what we're giving you credit for,  
24 848 days. All right Sir? LN 23 The def. "Yes Sir"

1 The CT. INSISTENTLY and Orally During a Sentencing  
2 hearing Sentenced def. to 848 day's credit For  
3 Time Served. ON June 9, 2010 Trans. Page 6  
4 LN 19+20 The CT. ~~that~~ <sup>Orally</sup> well, we'll give him, of  
5 course The preincarceration - - The "Plea" credit  
6 That we had reflected earlier. Page 5 LN 14+15  
7 defense Objected To Sentencing June 9, 2010.  
8 and was Overruled by The CT. The Prosecution  
9 had No Objections, The CT. Showed "lack of  
10 discretion" in holding OCT. 7, 2010 hearing on  
11 Sentencing issue as it was ruled on June 9,  
12 2010 and was (collaterally ESTOPPED) according  
13 to BLACKS law dictionary. ("An affirmative de-  
14 fense barring a party From relitigating an  
15 issue determined against that party in an  
16 earlier action even if the second action  
17 differs significantly from the first.") This  
18 being said The defence's Objections should  
19 have been allowed Showing complete Bias,  
20 prejudice and Lack of discretion. by  
21 Not Observing "Ros Judd Case"  
22 OCT. 7, 2010 Trans. Page 13 LN 12+13 The CT. ("The  
23 CT. had earlier denied, I believe, a Rule 35 in  
24 The Case.) There Never was a Rule 35 Filed  
25 IN THIS CASE PRIOR TO OCT. 7, 2010 LACK OF discretion.



### Argument 3

1. U.S. Constitutional rights are NOT Governed by State  
2. Ct. Rules or Procedures. Moore was denied his  
3. Procedural Due Process Rights as guaranteed by  
4. The 5<sup>th</sup> and 14<sup>th</sup> Amendments of The Const. of The United  
5. States when The Ct. allowed The State to go for-  
6. ward in Moore's Prosecution with out having a  
7. Grand Jury Indictment. June 12, 2008 Transcript  
8. CRFE-08-373 Page 32 LN 14, The Ct. "There has never  
9. been a Jury impaneled." The Ct. was aware  
10. of grand Jury, Bias, and Prejudice he proceeded on  
11. Information alone.  
12. In his underlying D.U.I. case Moore was charged  
13. with felony D.U.I. by way of 2nd Information charging  
14. him with that offense, which was filed in State of  
15. Idaho v. Moore D.U.I. Ho 800373 Ada County. The info.  
16. charging him with that offense on March 24, 2008,  
17. after a waiver of or having a preliminary hearing,  
18. The district court accepted Def.'s Alford Plea of guilty  
19. to the felony offense of D.U.I. charged in the info.,  
20. and on Dec. 31, 2008 The district Ct. entered a conv.  
21. against Moore for the felony D.U.I. The District  
22. Ct. violated Moore's Procedural Due Process Rights as  
23. guaranteed by The 5<sup>th</sup> and 14<sup>th</sup> Amendment of The U.S.  
24. Const. when it allowed The State to go forward

## Argument

1 in def's D.U.I. Prosecution, and in accepting Moore's  
2 Alford Plea and convicting ~~Moore~~ Moore without grand  
3 Jury Indictment charging him with The felony offense  
4 of D.U.I first having been returned.  
5 The Fifth Amend. to The U.S. Const. states in Re-  
6 spective part, "No Person shall be held to answer for  
7 a capital, or otherwise infamous crime, unless  
8 on presentment or indictment of a Grand Jury."  
9 U.S. Const. Amend. V Section one of The 14<sup>th</sup> Amend.  
10 provides, among other things, that a State may not  
11 "deprive" Any Person of life, liberty, or property, with-  
12 out due process of law." U.S. Const. Amend. XIV, §  
13 1. Pursuant to The Fifth Amend., "It has been decided  
14 that a crime takes on the quality if it be one  
15 punished by imprisonment at hard labor or in a pen-  
16 itentiary, and must be proceeded against upon  
17 presentment or indictment of a Grand Jury." Brady  
18 v. Powers, 263 U.S. 4, 10 (1923). Petitioner, Moore  
19 submits that The Grand Jury clause of The Fifth  
20 Amend. is now incorporated into The fourteenth Amend.'s  
21 due process clause and because felony D.U.I. is  
22 a crime punishable by imprisonment in a peniten-  
23 tiary, The State could only proceed against him  
24 on presentment or indictment of a Grand Jury.

## Argument

1 The district courts acceptance of Def.'s Alford plea,  
2 and the courts entry of a judgment conv. Moore  
3 of that offense "Emphases Added" violated Moore's  
4 Procedural due Process rights because the district  
5 possessed no jurisdiction over the felony D.U.I.  
6 offense in the absence of a proper indictment  
7 by a Grand Jury.

8 Moore was prejudiced by the courts acceptance  
9 of his Alford plea and the entry of conv. for  
10 the felony crime because the D.U.I. conv. exists  
11 and Moore currently remains incarcerated in  
12 prison pursuant to a sentence imposed for the  
13 conv.

14 Based upon the foregoing allegations, Petitioner  
15 has been denied both his State and Federal  
16 Constitutional and Statutory rights to the guarantee  
17 of a Grand Jury indictment.

18 "The very purpose of the requirement that a man be in-  
19 dicted by Grand Jury is to limit his jeopardy to offenses charged  
20 by a group of his fellow citizens acting independently  
21 of either prosecuting attorney or judge" Id. at 218. The  
22 "basic protection the Grand Jury was designed to  
23 afford is defeated by a device or method which sub-  
24 jects the defendant to pros. for an offense which the Grand  
25 Jury did NOT charge" Id.

## Argument

1 Because substantial right to be tried only on charges  
2 presented in an indictment returned by a Grand Jury is  
3 a guarantee fundamental to our scheme of ordered  
4 liberty and system of justice, it is incorporated by  
5 the 14<sup>th</sup> Amend.'s Due Process clause and applicable  
6 to the states.

7 In 1884, the U.S. S. Ct. found that the fifth Amend.  
8 right to an indictment or presentment by a Grand  
9 Jury was not incorporated into the 14<sup>th</sup> Amend.'s due  
10 process clause such that it did not apply to the  
11 states. Hurtado v. California, 110 U.S. 516 (1884). In  
12 2010, that same court recognized that, "our govern-  
13 ing decisions regarding the Grand Jury clause of  
14 the fifth Amendment long predate to era of selective  
15 incorporation." McDonald v. Chicago, — U.S. —, —  
16 —, 130 S. Ct. 3020, 3035 n.13 (2010). The McDonald  
17 Ct. further recognized that since Hurtado, the U.S.  
18 S. Ct. had "shed any reluctance to hold that rights  
19 guaranteed by the Bill of Rights met the requirements  
20 for protection under the Due Process clause." Id. at  
21 —, 130 S. Ct. at 3034, in determining whether a  
22 particular provision of the Bill of Rights is in-  
23 corporated in the 14<sup>th</sup> Amend.'s Due Process clause, a  
24 court must decide whether the guarantee is fundamental

## Argument:

1 To our Scheme of Ordered Liberty and System  
2 of Justice." *Id.*  
3 In order to determine whether a particular right is  
4 fundamental to our Scheme of Ordered Liberty and System  
5 of Justice, a majority of the U.S. S. Ct. has re-  
6 viewed the history of the particular right when the  
7 Bill of Rights was adopted and when the 14<sup>th</sup> Amend.  
8 was ratified. See e.g., McDonald, 130  
9 S.Ct. at 3036-3042. The right to a Grand Jury in  
10 dictum is "deeply rooted" in this Nation's history  
11 and traditions. The right to a Grand Jury "reflects  
12 centuries of antecedent development of common  
13 law, going back to the Assize of Clarendon in  
14 1166" Russell v. U.S., 369 U.S. 749, 761 (1962). The  
15 right is "an English institution, brought to this  
16 country by the early colonists and incorporated in the  
17 Const. by the Founders." *Id.* After the 5<sup>th</sup> Amend. was  
18 adopted, the Ct.s. "were not left to the requirements  
19 of the common law in regard to the necessity of  
20 a Grand Jury or a Trial Jury, but there is the posi-  
21 tive and restrictive language of the Great Fundamental  
22 instrument by which the National Gov. is organized  
23 <sup>see</sup> Ex Parte Bain, 121 U.S. 1, 6 (1887) by 1868, 29 states  
24 (78%) guaranteed the Grand Jury as a matter of right.

## Argument

1 And another 3 states used the Grand Jury without  
2 necessarily guaranteeing it as a right, bringing the  
3 total number of states that utilized Grand Jury  
4 proceedings to 32 (86%). Bryan H. Wilkowitz,  
5 Nationalizing the Bill of Rights: Scholarship and  
6 Commentary on the 14<sup>th</sup> Amend. in 1867-1873, 18 Se-  
7 Contemp. Legal Issues 153, 214-215 (2009). In  
8 addition, a leading constitutional scholar at the  
9 time of ratification published a treatise recog-  
10 nizing that the 14<sup>th</sup> Amendment would incorporate the  
11 Grand Jury clause and make it applicable to the  
12 states. Id. at 192-98.

B Because the right to a Grand Jury proceeding is  
14 deeply rooted in this nation's history and tradition,  
15 as evidenced by its inclusion in the original Bill  
16 of Rights and by history and traditions, as evi-  
17 denced by its inclusion in the original Bill of  
18 Rights and by its continued use at the time of  
19 the ratification of the 14<sup>th</sup> Amendment it is a "GARAN-  
20 tee [that] is fundamental to our scheme of  
21 ordered liberty and system of justice" and is  
22 incorporated into the due process clause of the 14<sup>th</sup>  
23 Amend. of the U.S. Constitution and applicable  
24 to the states. St. McDonald, U.S. 37, 130 S.Ct. 3034.

1 STATE V MOORE, TRANSCRIPT, DATED JULY 9, 2008 PAGE  
2 2 LNS. 20-25 PAGE 3 LINES 1-3 QUOTE THE COURT. "I  
3 CERTAINLY, IS THE DEF. IS AT ALL INTERESTED IN A CON-  
4 DITIONAL PLEA

5 \_\_\_\_\_  
6 UNITED STATES CONSTITUTION "WILL NOT  
7 REST."

8 \_\_\_\_\_  
9 \_\_\_\_\_  
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23 \_\_\_\_\_  
24 \_\_\_\_\_

1 Pled the Court would accept. I think this has  
2 some interesting angles to it that--but it's--  
3 the Court of Appeals or the Supreme Court  
4 could very well disagree with this Court's ruling.  
5 And so I'll give Mr. Moore that opportunity  
6 as far as a conditional appeal on this  
7 issue, if necessary." Aug. 6, 2006 Page 42  
8 Lines 3, 4, 5, 6, The Ct. "A conditional plea,  
9 which would allow for both this issue of the  
10 Speedy Trial rights as well as potentially  
11 any other issues to be taken up to the  
12 Supreme Ct. at one time" Quoted The Ct.  
13 Page 43 Page 43 Lines 6 through Quote The Ct.  
14 "I think there is another option available, and  
15 that is a conditional plea. But, certainly, it's not  
16 the Court's prerogative or right to require that of  
17 a defendant. Transcript page 53 Lines 11 through 14 "The Ct.  
18 "If it's a direct contempt, it will be run at the  
19 end of any sentence imposed in this case."  
20 This statement shows complete bias and  
21 prejudice on the part of the Ct. Complete  
22 bias and prejudice in making do's-keep  
23 Public as Council page 62, 63, 64, 65, 66, 67,  
24 68, 69, 70, 71, 72 and 73 showing complete prejudice



1 Showing complete prejudice in eliminating  
2 evidence that would impeach officers testimony.  
3 Such as def. Licence Plate and registration  
4 which were up to date along with epa rating,  
5 street to where car was parked not on  
6 Meridian but on Fairview 2 blocks or more  
7 from where officer stated could have been  
8 verified by the people who picked car up  
9 The following day. These were in the file  
10 of Charlene Davis. The ct. with bias and  
11 prejudice was eliminating any and all  
12 evidence that would have been facts such  
13 as proof up to date license plates as well  
14 as EPA test booklet not getting affidavit  
15 from Nathan Lee Bennett whether his plates  
16 were missing. Dec. 1, 2008 page 76 line 8-11 The ct.  
17 "we talked about a concurrent sentence potentially  
18 of 1yr fixed 4yr indet. along with the sentence  
19 that Mister Moore is currently serving in a  
20 earlier DUI case" This would mirror the agree-  
21 ment with pros. page 77 line 21-25 The ct. "this would  
22 be an indet plea, as I understand it. and also  
23 this would be a conditional plea because of  
24 the speedy trial -pg.

## Argument

1 Issue. Are there also factors Ms. Bublitz, that you wish  
2 put on the record" Page 78 L1-7 (Ms. Bublitz) "Your Honor,  
3 he may also be pursuing for appeal the issue of  
4 the Non-Conforming N.D. Statute, that was already raised  
5 before another judge and I believe, is on appeal  
6 as we speak, so that may be an issue in this  
7 case, as well, other than that yes that's correct."  
8 (Ms. Bonnetts) Pros. "It is correct Judge Thank you" that  
9 indicates the Pros. is in agreement with everything  
10 brought on Dec 1, <sup>2008</sup> including that if the case flopped at  
11 appellate level then this case would also and it  
12 flopped by appellate Ct. Reversing and remanding  
13 Page 79 L. 6+7 The Def. "that was actual physical control"  
14 indicating N.D. chg 8-13 The Ct. "Okay," and so if those go  
15 up on appeal and the Ct. is reversed on either or both  
16 of those decisions, then this case would come back. And  
17 it may very well be either completely dismissed if you  
18 were not afforded a speedy trial or, certainly, it could be  
19 reduced to a misdemeanor. Do you understand that," the  
20 Def. "Yes Sir" "We were in agreement" there was no mention  
21 of a continuing trial just that if it was reversed  
22 which it was it would be a misdemeanor or it would  
23 be at the end, there is no stipulation to continue  
24 Pros. Breached contract by continuing to Pros. after and

## Argument

1 upon vacating and remand agreement was ful  
2 filled Prox was over: read it yourself. Page  
3 88 L.22-25 The Def. "The offenses were physical  
4 control your Honor" the ct. "Okay" no where have  
5 I plead Guilty to a D.U.I. Only physical control  
6 Discribed by N.D. Statute 39-08-01 Subsection  
7 (1)(a) The Legislature defined one variation of the crime  
8 of actual physical control while under the influence,  
9 but this is not the exclusive definition of D.U.I.;  
10 Subsection (1)(b) makes it a crime to drive or be in  
11 actual physical control of any vehicle while under  
12 the influence of intoxicating liquor, physical control  
13 of any vehicle while under the influence of in  
14 toxicating liquor, and a defendant may be convicted  
15 of D.U.I. if the State <sup>"</sup>proves<sup>"</sup> beyond a reasonable  
16 doubt that the def. was driving a vehicle upon  
17 a public Highway while under the influence of  
18 intoxicating liquor so as not to possess the  
19 clearness of intellect and control of himself  
20 that he would otherwise have. State v. Miller,  
21 530 N.W.2d 652 (N.D. 1995) in West law provided  
22 by defendant. That was withheld by the Prox.  
23 Transcrip State of N.D. v. Albert R. Moane  
24 Crim. No. 98-K-3689 and No. 99-K-1120

## Argument

1 The STATE OF N.D. Never proved a D.U.I.  
2 ONLY physical control which is NOT a D.U.I.  
3 in THAT STATE Reference Transcript at Westlaw  
4 State v. Rutherford, 107 Idaho 910, 693 P.2d 112 (Ct.  
5 App. 1985). "Plea agreement was made with def.  
6 is to be sentenced in front of different  
7 Judge. Sato ballo + camper  
8 48-112 Different punishment license suspension of  
9 from 1 to 3 yrs mandated for any motorist cond. of eluding  
10 or of attempting to elude police officer did not  
11 qualify as a "Different punishment". Under catchall  
12 felony-sentencing provision requiring that unless  
13 "different punishment" is specified all felonies  
14 shall be punishable by term of imprisonment  
15 or no more than 5 yrs; license suspension had  
16 to be interpreted as being in addition to and  
17 not substitute for maximum 5 yr term specified  
18 by catchall provision, in order to avoid subverting  
19 the definition of motorist's offense as follows:  
20 I.C. 18-112, 49-1404 State v. McCoy, 1996, 128 Idaho  
21 362, 913 P.2d 578. So the sentence of 1 + 5  
22 equalling 6 plus 5 yr. license suspension after  
23 parole is a 11 yr sentence once again showing  
24 Judicial Prejudice in sentencing def. beyond

1 And the Ct. entertaining a motion to stay sen-  
2 tencing, I'm not - certainly a plea the court would  
3 accept. I think this has some interesting angles  
4 to it that - but it's - The court of appeals or the  
5 Supreme Court could very well disagree with this  
6 Ct's ruling and so I'll give Mr. Moore that opportunity,  
7 as far as a conditional appeal on this issue is  
8 necessary." Aug 6, 2008 page 42 Lines 3-6 The Ct. "a  
9 conditional plea which would allow for both this  
10 issue of the speedy trial rights as well as po-  
11 tentially any other issues to be taken up to the  
12 Supreme Ct. at one time" Coersion By The Ct.  
13 Page 43 Lines 6-9 the Ct. "I think there is another  
14 option available, and that is a conditional plea.  
15 But, certainly, it's not the Ct's prerogative or right  
16 to require that of a def." Showing Judge taking  
17 Responsibility from Pros. Construing Bias, Prejudice  
18 and Coersion. Page 53 Lines 11-14 The Ct. "it's a  
19 direct contempt. It will be now at the end of the  
20 sentence imposed in this case. Complete Bias.  
21 and Prejudice to make such a statement  
22 By The Judge Michael McLaughlin. also Bias  
23 and Prejudice in requiring def. to keep  
24 Jessica Bublets as council page 62 thru 73

## Argument

1 Means you're allowed to appeal these issues.  
2 The Speedy Trial issue and also this D.U.I. Out  
3 of North Dakota that been challenged as well.  
4 Do you understand that? The d.s. "Yes sir,  
5 That was actual physical control." The court.  
6 "Okay" and so if these go up on appeal and  
7 the court is reversed on either or both of  
8 these issues or decisions, then this case  
9 would come back, and it may very well be  
10 either completely dismissed if you were not  
11 afforded a Speedy trial or. Certainly it could  
12 be reduced to a Misdemeanor." "Do you un-  
13 derstand that." Page 88 A, "The offenses were  
14 physical control, your honor" Q. The court  
15 "Okay, being in physical control of an automobile  
16 while under the influence" Dec. 31, Page 99,  
17 Line 21-23 The court. "I'm going to follow Judge  
18 Wilper's lead on this. It's going to be a  
19 concurrent sentence, 1 yr. Fixed 4 yrs Indet.  
20 Credit for time served" Read Page 91 entirely.  
21 Plea agreement was made with the court  
22 1 + 4 = 5 yrs including following Judge  
23 Wilper's lead case # H0800374, 2007 which  
24 is now a misdemeanor which would

## Argument

1 Indicate as per transcript + plea agreement this  
2 case would be dismissed or Wilper's Judge Lead  
3 would and is a misdemeanor  
4 where the Ct. at Time of Sentencing the def.  
5 upon his plea of Guilty, simply imposed an identical  
6 sentence as that given the same defendant for  
7 a similar offense in another county, the Ct. did  
8 not abdicate the proper exercise of its discretion  
9 by replicating the sentence, where the record contained  
10 the Judge's remark that he had considered the criteria  
11 contained in 19-2521, and that he regarded the sentence  
12 imposed in companion case as fair: State v Salinas,  
13 103 Idaho 54, 644 P.2d 376 (Ct. App. 1982) So if he  
14 attempted to mirror another sentence Judge  
15 McLaughlin did not exercise discretion however had  
16 he proceeded as agreed with him + by him that  
17 would have been discretionary. "But prejudice  
18 + bias would not allow it."  
19 18-201 Ignorance of the Law is not a defense  
20 U.S.C.A. Amend 14 Wilson v. State, 2000, 133 Idaho  
21 874, 993 P.2d 1205 Crim-12w320 S.Ct. Law is  
22 Early v. Packer, 537 U.S. 3, 123 S.Ct. 362, 154 L.Ed.2d  
23 263 (2002)  
24 Santa Bello v. New York, 404 U.S. 257 (1971)

## Argument 12 K

- 1 higher Ct. Rulings From Fed. Circuits.
- 2 U.S. v. Camper, 66 F.3d 229 (1995)
- 3 U.S. v. Bombardier, 738 F.2d 1001, 1003 (9th Cir. 1984)
- 4 18. 202 in a crim. case the Ct. requires both
- 5 personal and subject matter jurisdiction in order
- 6 to properly proceed: State v. Rogers, 2004, 140 Idaho 223,
- 7 91 P.3d 1129 Crim. Law 92-98<sup>e</sup> Judge McLaughlin
- 8 did NOT have either subject matter nor jurisdiction
- 9 after remand according to Federal Supreme Court
- 10 Law. Under Early <sup>And</sup> ~~the~~ Santobello and Ruthersford,
- 11 Camper.
- 12 Allocution was so important a right that the trial
- 13 Ct's failure to meet its obligation to allow a defendant
- 14 opportunity of allocution was subject to challenge
- 15 on appeal as fundamental error: State v. Garza,
- 16 138 Idaho 813, 69 P.3d 1074 (APACt. 2003) There was
- 17 no allocution on June 9, 2010 or Oct. 7, 2010 not
- 18 allowed.
- 19 When a case is vacated it is as if it never
- 20 existed it is a nullity and the effect is as if
- 21 it had never been rendered: State v. McFarland
- 22 130 Idaho 358, 941 P.2d 330 (APACt. 1997) Indicating
- 23 that I was denied allocution on 2 different
- 24 occasions, June 9, 2010 and Oct. 7, 2010



## Argument

- 1 Hearing Date 1-26-2012 before Judge McLaughlin
- 2 On the question of Layne Davis's effect, v. Moss
- 3 AS Council the Ct. Ruled That he was effective
- 4 But for who? When asked if he compared the
- 5 Original authentication from M.P. with the second
- 6 authentication he indicated he had not why
- 7 were we in court June 9, 2010, because the App.
- 8 Ct. concluded that the authentication was improper
- 9 I am not an attorney and I am of every belief
- 10 that it was Layne Davis's responsibility to
- 11 insure that the authentication was proper he
- 12 did not by his own testimony. Judge McLaughlin's
- 13 Bias and prejudice would not allow him
- 14 to see something so simple or just plain Bias.
- 15 Exhibits supplied 11-12 and neither is proper
- 16 according to App. Standards.
- 17 Both stamps have or did have Rebecca Absey
- 18 Embossed on them and neither appear to be
- 19 signed by Rebecca Absey appearing to be
- 20 Forgery which would be considered in any honest
- 21 Court to be manifest <sup>of</sup> INJUSTICE.
- 22 Page 10 of writ. of Trans Doc 31 Pg. 99 L. 21-23 The Ct.
- 23 "I'm going to follow Judge Wilpore's lead on this."
- 24 Judge Wilpore's Lead "EXHIBIT 15"

## Argument

And so Amendment 5 due process + Double Jeopardy; "Nor shall any person be subject ~~to~~ for the same offense, JUN 9, 2010 and OCT. 7, 2010. Amend. 6 Speedy Trial Amend 7, Trial by Jury Amend 8 denial of civil Liberty Amend 13, involuntary servitude Amend 14, no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.

No EX POST FACTO law shall be passed. Art. 1 Sect. 9 (3) Sect. 10 (1) U.S. CONST; Sect. 13 Due Process Sect. 16 EX POST FACTO; Sect. 17 Unreasonable seizure of person; Sect. 18 Speedy Trial. CONST. of the State of Idaho.

HAMILTON V. U.S., 67 F.3d 761 (9th Cir. 1995): to prove violation of EX POST FACTO clause, two elements must be present: (1) law must apply to events occurring before its enactment, and (2) it must disadvantage offender affected by it.

Had Mr. Moore been arrested for (D.U.I.) in June of 2006 it would have been a 1<sup>st</sup> D.U.I. Under the old law granting immunity or amnesty for no violations in the previous 5 yrs. any interference with old law is EX POST FACTO

## Argument

1 And So The State in Prosecuting any violations  
2 That happened before the old law's jurisdiction  
3 is with out any doubt, ~~of~~ reason Ex Post  
4 Facto.

5 ~~Council's~~  
6 Def. has established That Plea bargain  
7 Coerced by The Court and agreed to by  
8 The prosecution. That it was unlawful for  
9 The Court to Coerce Plea and unlawful for  
10 The Court or Judge McLaughlin to proceed after  
11 Demand improper Authentication would appear  
12 Under Specific Performance.

13 It is Unquestionable That Judge McLaughlin  
14 Proceeded in a Prosecutorial Mode by his own  
15 Statement "It will be run at the end of any  
16 Sentence imposed in this case". And Then in  
17 Opposition to def's Motion to disqualify Council  
18 who was in fact Prosecuting def. by eliminating  
19 any evidence he might have. The def. in  
20 this Action faced 3 Prosecutors, Ms. Bennett,  
21 Ms. Bublitz and Michael McLaughlin, That  
22 has to be established or this Court has  
23 to establish That the entire record is a  
24 Lie, The Def's allegations are backed up

## Argument

- 1 by The Transcripts, Notations, Statements, by
- 2 Prosecutor, Defense Council and by The Court
- 3 Judge McLaughlin.
- 4 Prosecution withholding West law, Producing
- 5 forged documents Judge allowing forged
- 6 documents without ordering or having doc-
- 7 uments properly scrutinized. A complete
- 8 Failure of this process is without any
- 9 kind of argument, any argument would be
- 10 to allow a induction of Manifest Injustice;
- 11 § 18-2601 Every Person who, upon any Trial, Pro-
- 12 ceeding, inquiry or investigation whatever knowing
- 13 by the same to be forged is Guilty of a Felony.
- 14 § 18-2602 Preparing false evidence.
- 15 § 18-2603 Destruction, Alteration or Cancellation of evidence.
- 16 State v. Peters, 2003, 139 Id. 607, 83 P.3d 781
- 17 State v. Nunez, 1999, 133 Id. 13, 981 P.2d 739
- 18 § 18-3201 Officer stealing, mutilating, or falsifying Public records
- 19 § 18-3203 offering false or forged instrument for record.
- 20 The Ct. should after reviewing this record the Ct.
- 21 should prefer charges upon those who used presented
- 22 for record in Ct. forged documents.
- 23 Manifest Injustice—the fact that the Pros.
- cution withheld the North Dakota, West law

1 From The Record After it being Ordered into  
2 the Record in case # H0800374 and case # H0800373  
3 being joined at Appellate Level is manifest  
4 INJUSTICE it could be no plainer and would and  
5 can only be considered VINDICTIVE PROSECUTION.  
6 BANKS v. U.S., 920 F. Supp. 688 (E. Va. 1996): IT IS  
7 A VIOLATION of the due process clause when a  
8 PROSECUTOR knowingly suppresses evidence favorable  
9 to a defendant.  
10 Brady v. Maryland, 373 U.S. 83 L. Ed. 2d 215, 83 S. Ct  
11 1194 (1963) "Brady/Giglio evidence. Brady claim (1)  
12 PROSECUTION suppressed evidence; (2) evidence suppressed  
13 was favorable to the defense or exculpatory; (3)  
14 evidence suppressed was material.  
15 JENCKS v. U.S., 353 U.S. 657, 1 L. Ed. 2d, 77 S. Ct. 1007  
16 (1957) "we hold that the criminal action must be  
17 dismissed when the Gov., on the ground of privi-  
18 lege, elects not to comply with an order to  
19 produce, for the accused's inspection and for ad-  
20 mission in evidence, relevant statements or reports  
21 in its possession or Gov. or witnesses touching  
22 the subject matter  
23 Townsend v. Burke, 334 U.S. 736, 68 S. Ct. 1252, 93  
24 L. Ed. 1690 (1948) "Prisoner was sentenced on the basis

1 of assumptions concerning his crim. record which  
2 were materially untrue. Such a result, whether  
3 caused by carelessness or design, is inconsistent  
4 with due process of law, and such a conv. can-  
5 not stand."

6 Greene v. U.S., 880 F.2d 1299 (11th Cir. 1989): The Ct. held that  
7 one of defendant's prior convs. could not be used for  
8 enhancement purposes because although there was  
9 evidence that def. made a "knowing" waiver of coun-  
10 sel, there was no evidence that it was "voluntary"  
11 This was in violation of the 6<sup>th</sup> Amend's right to  
12 effective assistance of counsel. "As a general  
13 matter, convs. obtained in proceedings in which  
14 a crim. def. lacked the effective representation  
15 of counsel cannot be used to enhance punish-  
16 ment upon a subsequent conv."

17 Prosecution withheld evidence ordered by the Ct.  
18 Case # H0800374 joined at Appellate to H0800373  
19 Page 173 Trans. Case H0800374 5/22/2008 State v.  
20 Albert Moore provided along with N.D. Westlaw.  
21 Proving vindictive prosecution. and manifest injustice  
22 State v. Molinelli, 105, Id. 833, 673 P.2d 433 (1983) where  
23 State did not appeal from order withholding judgment.  
24 It could not appeal from previous order reducing

1 charges from felony it could not appeal from pre-  
2 views order reducing charges from felony to mis-  
3 demea nor is such order did not fall within  
4 the language of I.A.R. 11(C)(3) or (6); nor would S.Ct.  
5 exercise its plenary power to hear such appeal,  
6 under const., Art. 5 § 9, or treat the appeal as a  
7 petition for a writ of review under § 7-201  
8 and these rules.

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## CONCLUSION

Therefore, appellant respectfully requests that this court [what court should do].

Review Cite's Federal and State  
Review Opinions 35486, 36033 and 38285  
No. 76 they conflict it will be found  
that Judge Melanson appears on both?  
Review Transcripts and arguments by des.  
Review N.D. Westlaw N.D. ST. 39-08-01 - NDCG  
Review N.D. Transcript in conjunction with N.D.  
Westlaw N.D. ST. # 98-K-3689  
Review Id case H0800374 Pg. 173  
Review Id. June 9 Transcript in conjunction  
with OCT. 7, 2010 both being 2010  
Remand and order Dismissal of 311  
charges  
Court should enforce all its findings  
United State's "Constitution will  
NOT Rest"

Respectfully submitted this 10 day of April, 2012

Albert Moore  
Appellant

SUBSCRIBED AND SWORN (or affirmed)

before me this 10<sup>th</sup> day of April 2012

Notary Public for Idaho

My Commission Expires 2-17-15

APPELLANT'S BRIEF - 39

Revised: 10/14/05

